

Hon. Franklin D. Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

MICHAEL HERROD,

Plaintiff,

vs.

CITY OF VANCOUVER, BRIAN
MARTINEK, CHIEF OF POLICE,
VANCOVUER POLICE DEPARTMENT;
and DOES 1 THROUGH 5,

Defendants.

No. C07-5699FDB

DEFENDANTS CITY OF VANCOUVER
AND BRIAN MARTINEK'S ANSWER
AND AFFIRMATIVE DEFENSES IN
RESPONSE TO PLAINTIFF'S
COMPLAINT

JURY DEMAND

Defendants CITY OF VANCOUVER (sued separately and also improperly named a second time as VANCOUVER POLICE DEPARTMENT, which is not a separate legal entity) and BRIAN MARTINEK hereby answer the allegations contained in plaintiff's Complaint as follows. In response to the headings "**I. PARTIES,**" "**II. JURISDICTION AND VENUE,**" "**III. GENERAL ALLEGATIONS,**" "**IV. FIRST CAUSE OF ACTION. CONVERSION,**" "**V. SECOND CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS,**" "**VI. DAMAGES,**" and "**VI PRAYER FOR RELIEF,**" to the extent any response is required or to the extent they allege that Plaintiff's complaint has any factual or legal merit, Defendants deny the same. The headings are repeated in this pleading solely for ease of reference. Unless otherwise specified herein, the paragraph numbers contained in this pleading correspond to the paragraph numbers contained in plaintiff's complaint.

1 1.1 Defendants are without sufficient information to form a belief as to the truth or
2 falsity of the allegations contained in this paragraph, and therefore deny the same.

3 1.2 Admitted.

4 1.3 Admitted that Brian Martinek was the Chief of Police for the Vancouver Police
5 Department between October 30, 2002, and September 11, 2006. Denied that Vancouver
6 Police Department is "a municipal corporation." The phrase "at all times material hereto" calls
7 for a legal conclusion which is referred to the court and therefore denied. Admitted that Brian
8 Martinek, during the times that he was chief, had supervisory control over the entire Vancouver
9 Police Department for all matters. To the extent that paragraph 1.3 of plaintiff's complaint
10 alleges anything further or anything different, such is denied..

11 1.4 Paragraph 1.4 of plaintiff's complaint is directed toward unnamed parties and as
12 such these answering defendants cannot respond. To the extent paragraph 1.4 of plaintiff's
13 complaint suggests any employee, agent, or representative of the City of Vancouver acted
14 improperly in any way, such is denied.

15 1.5 Admitted.

16 2.1 Admitted that Chief Martinek, before he left employment of the City of
17 Vancouver, the City of Vancouver and the Vancouver Police Department operate within the
18 boundaries of Clark County. The remainder of this paragraph is denied.

19 2.2 This paragraph of plaintiff's complaint only characterizes the subject matter of
20 the complaint and therefore requires no response. To the extent paragraph 2.2 alleges that
21 Plaintiff's complaint has any factual or legal merit, or that Defendants are liable under the
22 statutes cited, Defendants deny the same.

23 2.3 Because defendants have properly removed this case to federal court, defendants
24 deny venue should rest in the Clark County Superior Court. Venue is proper in this court.
25

1 3.1 Defendants admit that on August 16, 2005, officers of the Vancouver Police
2 Department seized from Plaintiff, pursuant to a search warrant issued by Clark County District
3 Court Judge Richard A. Melnick, a 1997 Mercedes, \$491 in U.S. Currency, and three (3) IBM
4 computers. To the extent paragraph 3.1 of plaintiff's complaint alleges anything further or
5 anything different, defendants deny the same.

6 3.2 Admitted that Officer Erik McGarrity personally served a Notice of Seizure and
7 Intended Forfeiture on plaintiff on August 16, 2005, and that such Notice of Seizure specified
8 the following items as seized: (1) 97 Mercedes 320 (Blk), VIN WDBF1963FXVF14543, and
9 (2) \$491 U.S. Currency. To the extent paragraph 3.2 of plaintiff's complaint alleges anything
10 further or anything different, defendants deny the same.

11 3.3 Admitted that the Notice of Seizure contained the following language: "Written
12 notice of a claim and request for hearing must show your compete [sic] and accurate mailing
13 address and be mailed to the seizing agency at the address as given above. This is the **only**
14 means by which to serve your claim upon the seizing agency." (boldface and underscore in
15 original). To the extent paragraph 3.3 of plaintiff's complaint alleges anything further or
16 anything different, defendants deny the same.

17 3.4 Denied.

18 3.5 Admitted.

19 3.6 (referring to first paragraph denominated as #3.6) Admitted that "[t]he claim and
20 request for hearing was mailed by Certified Mail, Return Receipt Requested." The remainder
21 of the paragraph is denied..

22 3.6 [sic] (referring to second paragraph denominated as #3.6) Admitted.

23 3.7 Denied that Plaintiff "had duly and timely notified the Vancouver Police
24 Department of his claim of ownership and right to possession of the seized property."
25

1 Admitted that Plaintiff's request for hearing was denied as untimely. To the extent paragraph
2 3.7 of plaintiff's complaint alleges anything further or anything different, defendants deny the
3 same.

4 3.8 Admitted that Connie Bridges, a Financial Analyst with the Vancouver Police
5 Department, mailed a letter on October 4, 2005 to Plaintiff advising him, "Since the request
6 was not received within the required 45 days, we cannot grant your request for a hearing."
7 Denied that such action was "erroneous[], wrongful[], and malicious[]." To the extent
8 paragraph 3.8 of plaintiff's complaint alleges anything further or anything different, defendants
9 deny the same.

10 3.9 Denied.

11 3.10 Denied.

12 4.1 Defendant realleges and incorporates by reference paragraphs 1.1 through 3.10.

13 4.2 Denied.

14 4.3 Denied.

15 5.1 Defendant realleges and incorporates by reference paragraphs 1.1 through 4.3.

16 5.2 Denied.

17 5.3 Denied.

18 5.4 Denied.

19 5.5 Denied.

20 5.6 Denied.

21 6.1 Defendant realleges and incorporates by reference paragraphs 1.1 through 5.6.

22 6.2 Denied.

23 6.3 Denied.

24 6.4 Denied.

6.6 Denied.

As to the allegations under the heading “**VI. PRAYER FOR RELIEF**” and every paragraph thereunder, Defendants deny that plaintiff is entitled to any relief requested. As to any allegation to which Defendants have not yet responded, such allegations are specifically denied.

AFFIRMATIVE DEFENSES

Having fully answered plaintiff's complaint, and without waiving any admissions, denials, or responses previously set forth, Defendants affirmatively allege as follows:

1. Plaintiff's complaint fails to state a claim on which relief can be granted.

2. Plaintiff failed to exhaust his administrative remedies under chapter 34.05 RCW, and therefore this action is barred.

3. Defendants at all times acted in good faith in the performance of their duties and are therefore entitled to both absolute and qualified immunity.

4. To the extent plaintiff's complaint alleges impropriety on the part of the Hearing Examiner for decisions inherent in the judicial process, defendants are judicially immune.

5. Plaintiff has failed to mitigate his damages, if any.

6. Plaintiff's damages, if any, were caused in whole or in part by his own fault to reduce or bar recover under contributory fault principles.

PRAYER

WHEREFORE, having fully answered plaintiff's Complaint and asserted its affirmative defenses, defendants pray for judgment as follows:

1. That plaintiff take nothing by his complaint and this action be dismissed with prejudice.
2. That defendants be awarded their costs and a reasonable attorneys fees to the extent allowable by law.
3. Any other relief the court deems just and equitable.

DATED on April 17, 2008.

TED H. GATHE, CITY ATTORNEY
VANCOUVER, WASHINGTON

By: /s/ Daniel G. Lloyd
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date provided below, I electronically filed the foregoing
3 document with the Clerk of the Court using the CM/ECF system, which will send notification
of such filing to the following individual(s):

4 Mr. Richard J. Troberman
1501 4th Ave Ste 2150
5 Seattle , WA 98101-3225
6 **Tel:** (206) 343-1111, **Fax:** (206) 340-1936
E-mail: tmanlaw@aol.com

7
8 DATED on April 17, 2008.

9 TED H. GATHE, CITY ATTORNEY
10 VANCOUVER, WASHINGTON

11 By: /s/ Daniel G. Lloyd
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